



# STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

# DRAFT

Date Amended	<b>06/03/04</b>	Bill No:	<b>AB 901</b>
Tax:	<b>Covered Electronic Waste Recycling Fee</b>	Author:	<b>Jackson</b>
BOE Position:		Related Bills:	<b>SB 50 (Sher)</b>

## BILL SUMMARY

This bill would revise the operative date for the imposition of the covered electronic waste recycling fee from July 1, 2004 to November 1, 2004.

### Summary of Amendments

The previous version of this bill did not impact the BOE.

## ANALYSIS

### Current Law

Chapter 8.5 (commencing with Section 42460) to Part 3 of Division 30 of the Public Resources Code enacted the Electronic Waste Recycling Act of 2003 (the Act). Among other things, the Act imposes, **on and after July 1, 2004**, a covered electronic waste recycling fee upon the first sale in the state of a covered electronic device to a consumer by a retailer.

A retailer selling a covered electronic device to a consumer is required to collect a covered electronic waste recycling fee from the consumer for each covered device sold by the retailer in the following amounts:

- Six dollars (\$6) for each covered electronic device with a screen size of less than 15 inches measured diagonally.
- Eight dollars (\$8) for each covered electronic device with a screen size greater than or equal to 15 inches but less than 35 inches measured diagonally.
- Ten dollars (\$10) for each covered electronic device with a screen size greater than or equal to 35 inches measured diagonally.

The Integrated Waste Management Board (IWMB) is authorized to collect the covered electronic waste recycling fee pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code). However, the IWMB may contract with the BOE or another party for collection of the covered electronic waste recycling fee.

### Proposed Law

This bill would revise the imposition date for the covered electronic waste recycling fee upon the first sale in the state of a covered electronic device to a consumer by a retailer from “on and after **July 1, 2004**,” to “on and after **November 1, 2004**.”

The bill would become effective immediately as an urgency statute.

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*This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.*

### Background

In 2002, Senator Sher introduced Senate Bill 1523, which would have placed a \$10 advanced recycling fee on the sale of all new CRTs sold in California. Senate Bill 1523 passed both houses of the Legislature, but was vetoed by the Governor. In his veto statement, Governor Davis said he would rather see California legislation modeled after the product stewardship approach in the European Union, and that he was willing to sign legislation in 2003 that “challenges industry to assume greater responsibility for the recycling and disposal of electronic waste.” The veto statement also stated: “I challenge the industry to lead the way and devise an innovative solution for the source reduction, recycling and safe disposal of electronic waste . . . Moreover, we simply must demonstrate our leadership and compassion by making sure that California's electronic waste is not irresponsibly sent to underdeveloped nations.” In response to the Governor's challenge, Senator Sher introduced Senate Bill 20.

Senate Bill 20 (Sher, Ch. 526, Stats. 2003) enacted the Electronic Waste Recycling Act of 2003. Among other things, the Act imposes a covered electronic waste recycling fee upon the first sale in the state of a covered electronic device to a consumer by a retailer. The Act authorizes the IWMB to contract with the BOE or another party for collection of the fee, however, the BOE has not entered into a contract as of the date of this analysis.

### COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author and is intended to postpone the implementation of the covered electronic waste recycling fee.
2. **The BOE could not administer a new fee program commencing on and after January 1, 2005, without substantial risk to its Revenue Database Consolidation (RDC) Project.** Since April 2004 and running through the remainder of the 2004 calendar year, the BOE is implementing the RDC project. The RDC project involves extensive changes to the Integrated Revenue Information System (IRIS), the BOE's primary tax administration system. The RDC project implementation and stabilization efforts will occupy significant BOE staff resources for the rest of 2004.

In addition, the BOE is currently in the process of developing, testing and implementing technology changes related to new legislatively mandated programs\* enacted in 2002 and 2003. This effort has been included in the multi-year, multi-phase RDC project and will be on-going through the end of 2004.

In its current form, this bill would not affect the BOE since the BOE has not contracted with the IWMB to collect the covered electronic waste recycling fee. However, if this measure, along with SB 50 (Sher), are signed by the Governor, the BOE would be required to collect the fee on and after January 1, 2005. This would require programming to the BOE's computer system at the end of 2004, which is during the final stages of the RDC Project. Making any modifications at the end of the system development would put the BOE's RDC project, including the programming for the new legislatively mandated programs, at substantial risk. Because of this risk, the BOE can not add a new tax or fee program to its system until early 2005. As such, the bill should be amended to revise the operative date for the fee from **November 1, 2004** to **January 1, 2005**.

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\* to SB 1049 (Water Rights Fee), AB 71 (Cigarette and Tobacco Products Licensing Act), and SB 1701 (Alternative Cigarette and Tobacco Stamps)

3. **Duplicative responsibilities.** Senate Bill 50 would require, on or before November 1, 2005, the IWMB (in consultation with the BOE) to issue a notice to affected retailers regarding their obligation to register, collect and remit the fee to the BOE. The IWMB would also establish a call center for the purposes of responding to inquiries regarding the registration, payment or collection of the fee.

BOE staff is concerned that it would be costly and duplicative to have the IWMB commence a new fee program only to have it taken over by the BOE within two months. In addition, BOE staff has serious concerns that the IWMB may not capture all feepayers, which could result in the BOE inheriting a program with incomplete registration information.

To address this concern, it is suggested that AB 901 be amended to impose the covered electronic waste recycling fee operative **January 1, 2005**, and amend SB 50 to provide the BOE sole responsibility for implementing and collecting the fee.

4. **Could the state require out-of-state retailers to remit a covered electronic waste recycling fee?** Various Supreme Court cases have focused on states' ability to impose the use tax on out-of-state firms making sales to in-state customers. In 1967 the Supreme Court ruled in *National Bellas Hess, Inc. v. Illinois Department of Revenue*, 386 U.S. 753 (1967), that a firm that has no link to a state except mailing catalogs to state residents and filling their orders by mail cannot be subject to that state's sales or use tax. The Court ruled that these mail order firms lacked substantial physical presence, or nexus, required by the Due Process Clause and the Commerce Clause of the United States Constitution.

In the 1977 case of *Complete Auto Transit, Inc. v. Brady* (1977) 430 U.S. 274 {51 L.Ed.2d 326, 97 S.Ct. 1076} the Court articulated that, in order to survive a Commerce Clause challenge, a tax must satisfy a four part test: 1) it must be applied to an activity with a substantial nexus with the taxing State, 2) it must be fairly apportioned, 3) it does not discriminate against interstate commerce, and 4) it must be fairly related to the services provided by the State.

North Dakota enacted anti-National Bellas Hess legislation with the expressed purpose of creating nexus with mail order firms selling to consumers in the state, in an attempt to compel out-of-state retailers to collect the use tax on mail order sales and test the continuing validity of the National Bellas Hess decision. The statute was challenged, and in 1992 the Supreme Court issued a ruling in *Quill Corporation v. North Dakota* (1992) 504 U.S. 298. The Court in *Quill* applied the *Complete Auto Transit* analysis and held that satisfying due process concerns does not require a physical presence, but rather requires only minimum contacts with the taxing state. Thus when a mail-order business purposefully directs its activities at residents of the taxing state, the Due Process Clause does not prohibit the state's requiring the retailer to collect the state's use tax. However, the Court held further that physical presence in the state was required for a business to have a "substantial nexus" with the taxing state for purposes of the Commerce Clause. The Court therefore affirmed that in order to survive a Commerce Clause challenge, a retailer must have a physical presence in the taxing state before that state can require the retailer to collect its use tax.

Based on the above cases, it is questionable whether the state could require an out-of-state retailer of a covered electronic device, who has no physical presence in California, to remit a fee in order for that device to be sold to a consumer in this state. Furthermore, existing law (Section 42464) imposes the covered electronic

waste recycling fee “upon the first sale **in the state** of a covered electronic device to a consumer by a retailer.” Based on that language, it appears that the fee may not apply to out-of-state retailers (whether or not that retailer has a physical presence in the state) since the sale occurs at the time title to the property transfers to the buyer, which typically occurs **outside of the state**.

5. **Related legislation.** Among other things, Senate Bill 50 (Sher) would require the BOE to collect the covered electronic waste recycling fees on and after January 1, 2005.

## **COST ESTIMATE**

Enactment of this measure would not impact the BOE’s administrative costs since this measure would not require the BOE to administer the fee.

## **REVENUE ESTIMATE**

### **Background, Methodology, and Assumptions**

The Electronic Waste Recycling Act of 2003 imposes a fee on covered electronic devices in the following format: (1) \$6 for each covered electronic device with a screen size of less than 15 inches measured diagonally (2) \$8 for each covered electronic device with screen size greater than or equal to 15 inches but less than 35 inches measured diagonally (3) \$10 for each covered electronic device with a screen size greater than or equal to 35 inches measured diagonally.

In the *Selected E-Waste Diversion in California* study in 2001, the CIWMB projected that in year 2004, 3.5 million television units would be sold in California and 5.4 million monitors, adding up to sales of 8.9 million covered electronic devices.

In a 2001 presentation by Electronic Industries Alliance (EIA) titled *Cathode Ray Tube Manufacturing and recycling: Analysis of Industry Survey*, CRT’s (televisions, monitors) sold in year 2000 by North American dealers was highlighted. The CRT’s were categorized based on size (inches). We merged both CRT’s and grouped them in the 3 groups as proposed by the bill:

#### **Units Sold in Year 2000 – TV’s & Monitors**

	<b>(millions)</b>	<b>(percentage)</b>
Less than 15 inches	24.9	33%
15 or more than 15 inches, less than 35	50.1	66%
More than 35 inches	1.2	2%
Total North American	<u>76.2</u>	<u>100%</u>

Using those ratios, the 2004 sales projection by CIWMB is broken down into the 3 size groups and fees applied to estimate revenue:

**California: 2004 Projected Sales Grouped in Inches as Bill Proposes & Estimated Revenue**

	(millions) Units	(millions) Revenue
Less than 15 inches ((33% × 8.9 million units) × \$6 )	2.9	17.5
15 or more than 15 inches, less than 35 ((66% × 8.9 million units) × \$8)	5.9	46.9
More than 35 inches ((2% × 8.9 million units) × \$10)	0.1	1.4
	<u>8.9</u>	<u>65.8</u>

By analyzing 2003 US Census retail statistics, we estimate that at least 30% of television and computer monitor sales occur during the period between July and October. Based on this, we estimate that the new collection fee date of November 1, 2004 (initial effective date was July 1, 2004) would result in a revenue loss of \$19.7 million ( $0.30\% \times \$65.8 \text{ million} = \$19.7 \text{ million}$ ).

**Revenue Summary**

This bill, by delaying the operative date of the fee, would result in a one-time revenue loss of \$19.7 million for the Electronic Waste Recovery and Recycling Account .

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